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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,496	03/25/2004	Yasuyuki Murakami	52221/DBP/A400	9053
23363	7590	11/16/2004	EXAMINER	
CHRISTIE, PARKER & HALE, LLP PO BOX 7068 PASADENA, CA 91109-7068			BELL, KENT L	
			ART UNIT	PAPER NUMBER
			1661	

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	Applicant(s)	
10/810,496	MURAKAMI ET AL.	
Examiner	Art Unit	
Kent L. Bell	1661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

application filed 3/25/04

1)  Responsive to communication(s) filed on 3/25/04.

2a)  This action is FINAL. 2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4)  Claim(s) 1 is/are pending in the application.

4a) Of the above claim(s) 1 is/are withdrawn from consideration.

5)  Claim(s) 1 is/are allowed.

6)  Claim(s) 1 is/are rejected.

7)  Claim(s) 1 is/are objected to.

8)  Claim(s) 1 are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 3/25/04 is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some \* c)  None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1)  Notice of References Cited (PTO-892)

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/25/04 + 8/9/04

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_\_

*K. L. Bell*

**Detailed Action**

**Objection to the Disclosure**

**37 CFR 1.163**

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

**35 USC 112**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

**Detailed Action**

In plant applications filed under 35 U.S.C 161, the requirements of 35 U.S.C. 112 are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 35 CFR 1.163(a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear, and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More Specifically:

A. Page 1, lines 17-20, and page 2, line 17, Rather than stating "Pat." it appears the recitation --Patent-- would be more appropriate in these instances.

B. Page 3, line 23, and page 4, line 6, Applicants state "Outside color of the corolla throat". Applicants should review this recitation as it appears applicants may have intended to state --corolla tube-- as stated on page 6, line 3. Correction and/or clarification is necessary.

C. Page 4, line 14, Applicants state "asexially". Applicants should delete this recitation and insert --asexually-- as this is the correct spelling for this term.

**Detailed Action**

D. Page 5, lines 11-17, Applicants should set forth in the specification additional information relative to the instant plant's stem including the typical and observed stem length.

E. Applicants should set forth in the specification information relative to the instant plant's petioles including the typical and observed petiole length, diameter, and coloration with reference to the employed color chart.

F. Applicants should set forth in the specification information relative to the instant plant's buds including the typical and observed bud shape, length, diameter, and coloration with reference to the employed color chart.

G. Page 5, line 28 to page 6, line 4, Applicants should set forth in the specification information relative to the instant plant's petals including the typical and observed petal shape, length, width, and margin descriptor.

H. Page 5, line 35, Applicants should set forth in the specification additional information relative to the instant plant's flower including the typical and observed flower depth.

**Detailed Action**

I. Page 5, line 37 to page 6, line 2, Applicants have provided a coloration for the bottom of the corolla throat. Applicants should set forth in the specification a coloration for the top of the corolla throat with reference to the employed color chart.

J. Page 6, lines 16 and 17, Applicants should set forth in the specification additional information relative to the instant plant's peduncle including the typical and observed coloration with reference to the employed color chart.

K. Page 6, line 21, Applicants should set forth in the specification additional information relative to the instant plant's sepals including the typical and observed sepal shape, length, width, apex, base, and margin descriptors, and coloration (both surfaces) with reference to the employed color chart.

L. During a UPOV-ROM search two foreign Plant Breeders Rights applications were found for a Calibrachoa plant named 'Sunbelbusta', CA PBR 04-4071 and AU PBR 2004160. Applicants should review these two documents and verify whether the plant in the instant U.S. Plant Patent application is the same plant as that set forth in either or both of the two Plant Breeders Rights applications. If the plants are one and the same then the Genus and species of the

**Detailed Action**

instant plant should be verified and correctly set forth in the specification. Correction and/or clarification is necessary.

The above listing may not be complete. Applicant should carefully review the disclosure and import into same any corrected or additional information which would aid in botanically identifying and/or distinguishing the cultivar for which United States Plant Patent protection is sought.

**Claim Rejection**

**35 U.S.C. 112, 1st & 2nd Paragraphs**

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for the reasons set forth in the Objection to the Disclosure Section above.

**Detailed Action**

**Future Correspondence**

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kent L. Bell whose telephone number is (571) 272-0973. The Examiner can normally be reached Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Wang, can be reached at (571) 272-0811.

The fax phone number for the group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-1600.

K. L. Bell

KENT BELL  
PRIMARY EXAMINER

*Kent L. Bell*